

(b) An authorized carrier seeking to add a foreign market to the list of markets to which carriers may provide switched services over private lines must make the following showing in a Section 214 application filed pursuant to § 63.18 or in a petition for declaratory ruling:

(i) If seeking a Commission ruling to permit the provision of international switched basic services over private lines between the United States and a WTO Member country, the applicant shall demonstrate either that settlement rates for at least 50 percent of the settled U.S.-billed traffic between the United States and the country at the foreign end of the private line are at or below the benchmark settlement rate adopted for that country in IB Docket No. 96-261 *or* that the country affords resale opportunities equivalent to those available under U.S. law.

(ii) If seeking a Commission ruling to permit the provision of international switched basic services over private lines between the United States and a non-WTO Member country, the applicant shall demonstrate that settlement rates for at least 50 percent of the settled U.S.-billed traffic between the United States and the country at the foreign end of the private line are at or below the benchmark settlement rate adopted for that country in IB Docket No. 96-261 *and* that the country affords resale opportunities equivalent to those available under U.S. law.

(c) With regard to showing under paragraph (b) of this section that a destination country affords resale opportunities equivalent to those available under U.S. law, an applicant shall include evidence demonstrating that equivalent resale opportunities exist between the United States and the subject country, including any relevant bilateral or multilateral agreements between the administrations involved. The applicant must demonstrate that the foreign country at the other end of the private line provides U.S.-based carriers with:

(i) The legal right to resell international private lines, interconnected at both ends, for the provision of switched services;

(ii) Reasonable and nondiscriminatory charges, terms and conditions for interconnection to foreign domestic carrier facilities for termination and origination of international services, with adequate means of enforcement;

(iii) Competitive safeguards to protect against anticompetitive and discriminatory practices affecting private line resale; and

(iv) Fair and transparent regulatory procedures, including separation between the regulator and operator of international facilities-based services.

Note 1 to § 63.16: The Commission's benchmark settlement rates are available in *International Settlement Rates, Report and Order*, 12 FCC Rcd 19,806, 62 FR 45758 (August 29, 1997).

13. Section 63.17 is amended by changing "(e)(6)" to "(e)(4)" at the end of paragraph (b)(4).

14. Section 63.18 is amended by revising paragraphs (e), (f), (g), (h), and (i) to read as follows:

§ 63.18 Contents of applications for international common carriers.

(e) One or more of the following statements, as pertinent:

(1) Global Facilities-Based Authority. If applying for authority to become a facilities-based international common carrier subject to § 63.22, the applicant shall:

(i) State that it is requesting Section 214 authority to operate as a facilities-based carrier pursuant to § 63.18(e)(1) of the Commission's rules

(ii) List any countries for which the applicant does not request authorization under this paragraph (see § 63.22(a)); and

(iii) Certify that it will comply with the terms and conditions contained in §§ 63.21 and 63.22.

(2) Global Resale Authority. If applying for authority to resell the international services of authorized U.S. common carriers subject to § 63.23, the applicant shall:

(i) State that it is requesting Section 214 authority to operate as a resale carrier pursuant to § 63.18(e)(2) of the Commission's rules;

(ii) List any countries for which the applicant does not request authorization under this paragraph (see § 63.23(a)); and

(iii) Certify that it will comply with the terms and conditions contained in §§ 63.21 and 63.23.

(3) Transfer of Control or Assignment. If applying for authority to acquire facilities through the transfer of control of a common carrier holding international Section 214 authorization, or through the assignment of another carrier's existing authorization, the applicant shall complete paragraphs (a) through (d) of this section for both the transferor/assignor and the transferee/assignee. Only the transferee/assignee needs to complete paragraphs (h) through (k) of this section. At the beginning of the application, the applicant should also include a narrative of the means by which the transfer or assignment will take place. The Commission reserves the right to request additional information as to the particulars of the transaction to aid it in making its public interest determination. An assignee shall notify the Commission no later than 30 days after either consummation of the assignment or a decision not to consummate the assignment. The notification may be by letter and shall identify the file numbers under which the initial authorization and the authorization of the assignment were granted. See also § 63.24 (*pro forma* assignments and transfers of control).

(4) Other Authorizations. If applying for authority to acquire facilities or to provide services not covered by paragraphs (e)(1) through (e)(3), the applicant shall provide a description of the

facilities and services for which it seeks authorization. The applicant shall certify that it will comply with the terms and conditions contained in § 63.21 and § 63.22 and/or § 63.23, as appropriate. Such description also shall include any additional information the Commission shall have specified previously in an order, public notice or other official action as necessary for authorization.

(g) Where the applicant is seeking facilities-based authority under paragraph (e)(4) of this section, a statement whether an authorization of the facilities is categorically excluded as defined by § 1.1306 of this chapter. If answered affirmatively, an environmental assessment as described in § 1.1311 of this chapter need not be filed with the application.

(h) A certification as to whether or not the applicant is, or has an affiliation with, a foreign carrier, supported by the following information:

(1) In support of the required certification, each applicant shall also provide the name, address, citizenship and principal businesses of its greater-than-25-percent direct and indirect shareholders or other equity holders and identify any interlocking directorates.

(2) The certification shall state with specificity each foreign country in which the applicant is, or has an affiliation with, a foreign carrier.

(3) Any applicant that seeks to provide international telecommunications services to a particular country and that is a foreign carrier in that country, or directly or indirectly controls a foreign carrier in that country, or has an affiliation within the meaning of paragraph (h)(1)(i)(B) of this section with a foreign carrier in that country shall make one of the following showings:

(i) The named foreign country (i.e., the destination foreign country) is a Member of the World Trade Organization; or

(ii) The applicant's affiliated foreign carrier lacks sufficient market power in the named foreign country to affect competition adversely in the U.S. market; or

(iii) The named foreign country provides effective competitive opportunities to U.S. carriers to compete in that country's market for the service that the applicant seeks to provide (facilities-based, resold switched, or resold non-interconnected private line services). An effective competitive opportunities demonstration should address the following factors:

(A) If the applicant seeks to provide facilities-based international services, the legal ability of U.S. carriers to enter the foreign market and provide facilities-based international services, in particular international message telephone service (IMTS);

(B) If the applicant seeks to provide resold services, the legal ability of U.S. carriers to enter the foreign market and provide resold international switched services (for switched

resale applications) or non-interconnected private line services (for non-interconnected private line resale applications);

(C) Whether there exist reasonable and nondiscriminatory charges, terms and conditions for interconnection to a foreign carrier's domestic facilities for termination and origination of international services or the provision of the relevant resale service;

(D) Whether competitive safeguards exist in the foreign country to protect against anticompetitive practices, including safeguards such as:

(1) Existence of cost-allocation rules in the foreign country to prevent cross-subsidization;

(2) Timely and nondiscriminatory disclosure of technical information needed to use, or interconnect with, carriers' facilities; and

(3) Protection of carrier and customer proprietary information;

(E) Whether there is an effective regulatory framework in the foreign country to develop, implement and enforce legal requirements, interconnection arrangements and other safeguards; and

(F) Any other factors the applicant deems relevant to its demonstration.

(4) Any applicant that proposes to resell the international switched services of an unaffiliated U.S. carrier for the purpose of providing international telecommunications services to the named foreign country and that is a foreign carrier in that country or has an affiliation with a foreign carrier in that country shall either provide in its application a showing that would satisfy § 63.10(a)(3) or state that it will file the quarterly traffic reports required by § 43.61(c) of this chapter.

(5) With respect to regulatory classification under § 63.10, any applicant that certifies that it is or has an affiliation with a foreign carrier in a named foreign country and that desires to be regulated as non-dominant for the provision of particular international telecommunications services to that country should provide information in its application to demonstrate that it qualifies for non-dominant classification pursuant to § 63.10.

(i) Each applicant shall certify that the applicant has not agreed to accept special concessions directly or indirectly from any foreign carrier with respect to any U.S. international route where the foreign carrier possesses sufficient market power on the foreign end of the route to affect competition adversely in the U.S. market and will not enter into such agreements in the future.

15. Section 63.21 is amended by revising the section heading, revising paragraph (a), and adding new paragraphs (i) and (j) to read as follows:

§ 63.21 Conditions applicable to all international Section 214 authorizations.

(a) Each carrier is responsible for the continuing accuracy of the certifications made in its application. Whenever the substance of any such certification is no longer accurate, the carrier shall as promptly as possible and in any event within thirty days file with the Secretary in duplicate a corrected certification referencing the FCC File No. under which the original certification was provided. The information may be used by the Commission to determine whether a change in regulatory status may be warranted under § 63.10. See also § 63.11.

(i) Subject to the requirement of § 63.10 that a carrier regulated as dominant along a route must provide service as an entity that is separate from its foreign carrier affiliate, and subject to any other structural-separation requirement in Commission regulations, an authorized carrier may provide service through any wholly owned subsidiaries without seeking additional Commission authorization, *provided* that this provision shall not be construed to authorize the provision of service by any entity barred by statute or regulation from itself holding an authorization or providing service.

(j) An authorized carrier that changes its name shall notify the Commission by letter filed with the Secretary in duplicate within 30 days of the name change. Such letter shall reference the FCC File No. under which the carrier's authorizations were granted.

16. Section 63.22 is added to read as follows:

§ 63.22 Facilities-based international common carriers.

The following conditions apply to authorized international facilities-based carriers:

(a) A carrier authorized under § 63.18(e)(1) may provide international facilities-based services to international points for which it qualifies for non-dominant regulation as set forth in § 63.10, except in the following circumstance: If the carrier is or is affiliated with a foreign carrier in a destination market and the Commission has not determined that the foreign carrier lacks sufficient market power in the destination market to affect competition adversely in the U.S. market (see § 63.10(a)), the carrier shall not provide service on that route unless it has received specific authority to do so under § 63.18(e)(4).

(b) The carrier may provide service using half-circuits on any appropriately licensed U.S. common carrier and non-common carrier facilities (under either Title III of the Communications Act of 1934, as amended, or the Submarine Cable Landing License Act, 47 U.S.C. §§ 34-39) that do not

appear on an exclusion list published by the Commission. Carriers may also use any necessary non-U.S.-licensed facilities, including any submarine cable systems, that do not appear on the exclusion list. Carriers may not use U.S. earth stations to access non-U.S.-licensed satellite systems unless the Commission has specifically approved the use of those satellites and so indicates on the exclusion list, and then only for service to the countries indicated thereon. The exclusion list is maintained on the Commission's World Wide Web site at <http://www.fcc.gov/ib/td/pf/exclusionlist.html>.

(c) The carrier may not provide service to any country listed on an exclusion list published by the Commission unless it has received specific authority under § 63.18(e)(4).

(d) The carrier may provide international basic switched, private line, data, television and business services.

(e) Subject to the requirements of the Submarine Cable Landing License Act, 47 U.S.C. 34-39, the carrier is authorized to construct, acquire, or operate lines in any new major common carrier facility project between the United States and all international points that it is authorized to serve on a facilities basis. This paragraph shall not authorize the carrier to engage in any construction or extension of lines that may have a significant effect on the environment as defined in § 1.1307 of this chapter. See § 1.1312 of this chapter. The carrier must seek specific Section 214 authority and comply with the Commission's environmental rules before any such construction or extension.

(f) Except as otherwise ordered by the Commission, the carrier may provide facilities-based service to a market served by an affiliate that terminates U.S. international switched traffic only if that affiliate has in effect a settlement rate with U.S. international carriers that is at or below the Commission's relevant benchmark adopted in IB Docket No. 96-261. See FCC 97-280 (rel. Aug. 18, 1997) (available at the FCC's Reference Operations Division, Washington, D.C. 20554, and on the FCC's World Wide Web Site at <http://www.fcc.gov>).

(g)(1) Except as provided in paragraph (g)(2) of this section, the carrier may provide switched basic services over its authorized facilities-based private lines if and only if the country at the foreign end of the private line appears on a Commission list of countries to which the Commission has authorized the provision of switched services over private lines. See § 63.16. If at any time the Commission finds that the country no longer provides equivalent resale opportunities or that market distortion has occurred in the routing of traffic between the United States and that country, the carrier shall comply with enforcement actions taken by the Commission.

(2) The carrier may use its authorized private line facilities to provide switched basic services in circumstances where the private line facility is interconnected to the public switched network on only one end — either the U.S. end or the foreign end — and where the carrier is not operating the facility in correspondence with a carrier that directly or indirectly owns the private line facility in the foreign country at the other end of the private line.

(h) The carrier shall file annual international circuit status reports as required by § 43.82 of this chapter.

(i) The authority granted under this part is subject to all Commission rules and regulations and any conditions or limitations stated in the Commission's public notice or order that serves as the carrier's Section 214 certificate. See § 63.12.

17. Section 63.23 is added to read as follows:

§ 63.23 Resale-based international common carriers.

The following conditions apply to carriers authorized to resell the international services of other authorized carriers:

(a) A carrier authorized under § 63.18(e)(2) may provide resold international services to international points for which the applicant qualifies for non-dominant regulation as set forth in § 63.10, except that the carrier may not provide either of the following services unless it has received specific authority to do so under § 63.18(e)(4):

(i) Switched resold services to a non-WTO Member country where the applicant is or is affiliated with a foreign carrier; and

(ii) Switched or private line services over resold private lines to a destination market where the applicant is or is affiliated with a foreign carrier and the Commission has not determined that the foreign carrier lacks sufficient market power in the destination market to affect competition adversely in the U.S. market (see § 63.10(a)).

(b) The carrier may not resell the international services of an affiliated carrier regulated as dominant on the route to be served unless it has received specific authority to do so under § 63.18(e)(4).

(c) Except as provided in paragraph (b) of this section, the carrier may resell the international services of any authorized common carrier, pursuant to that carrier's tariff or contract duly filed with the Commission, for the provision of international basic switched, private line, data, television and business services to all international points.

(d) The carrier may provide switched basic services over its authorized resold private lines if and only if the country at the foreign end of the private line appears on a Commission list of countries to which the Commission has authorized the provision of switched services over private lines. See § 63.16. If at any time the Commission finds that the country no longer provides equivalent resale opportunities or that market distortion has occurred in the routing of traffic between the United States and that country, the carrier shall comply with enforcement actions taken by the Commission.

(e) Any party certified to provide international resold private lines to a particular geographic market shall report its circuit additions on an annual basis. Circuit additions should indicate the specific services provided (e.g., IMTS or private line) and the country served. This report shall be filed on a consolidated basis not later than March 31 for the preceding calendar year.

(f) The authority granted under this part is subject to all Commission rules and regulations and any conditions or limitations stated in the Commission's public notice or order that serves as the carrier's Section 214 certificate. See §§ 63.12, 63.21.

18. Section 63.24 is added to read as follows:

§ 63.24 *Pro forma* assignments and transfers of control.

(a) *Definition.* An assignment of an authorization granted under this part or a transfer of control of a carrier authorized under this part to provide an international telecommunications service is a *pro forma* assignment or transfer of control if it falls into one of the following categories and, together with all previous *pro forma* transactions, does not result in a change in the carrier's ultimate control:

- (1) Assignment from an individual or individuals (including partnerships) to a corporation owned and controlled by such individuals or partnerships without any substantial change in their relative interests;
- (2) Assignment from a corporation to its individual stockholders without effecting any substantial change in the disposition of their interests;
- (3) Assignment or transfer by which certain stockholders retire and the interest transferred is not a controlling one;
- (4) Corporate reorganization that involves no substantial change in the beneficial ownership of the corporation;
- (5) Assignment or transfer from a corporation to a wholly owned subsidiary thereof or vice versa, or where there is an assignment from a corporation to a corporation owned or controlled by the assignor stockholders without substantial change in their interests; or
- (6) Assignment of less than a controlling interest in a partnership.

(b) A *pro forma* assignment or transfer of control of an authorization to provide international telecommunications service is not subject to the requirements of § 63.18. A *pro forma* assignee or a carrier that is the subject of a *pro forma* transfer of control is not required to seek prior Commission approval for the transaction. A *pro forma* assignee must notify the Commission no later than 30 days after the assignment is consummated. The notification may be in the form of a letter, and it must contain a certification that the assignment was *pro forma* as defined in paragraph (a) of this section and, together with all previous *pro forma* transactions, does not result in a change of the carrier's ultimate control. A single letter may be filed for an assignment of more than one authorization if each authorization is identified by the file number under which it was granted.

19. Section 63.25 is added to read as follows:

§ 63.25 Special procedures for non-dominant international common carriers.

(a) Any party that would be a non-dominant international communications common carrier is authorized to provide facilities-based international services, subject to § 63.22, between the United States and all international points, except that this paragraph shall not authorize the party to provide service between the United States and any country where an affiliated foreign carrier operates.

(b) Any party that would be a non-dominant international communications common carrier is authorized to provide resold international services, subject to § 63.23, between the United States and all international points, except that this paragraph shall not authorize the party to provide service between the United States and any country where an affiliated foreign carrier operates.

(c) Within 30 days of commencing service pursuant to paragraph (a) or (b), the party shall notify the Commission by letter addressed to the Chief, International Bureau, that it has commenced providing service pursuant to § 63.25 of the Commission's rules. Such letter shall include the applicable information and certifications described in § 63.18.

(d) Notwithstanding paragraphs (a) and (b), the Commission reserves the right to condition or revoke the authorization of any entity for a violation of the Commission's rules or policies, and such condition or revocation shall be effective against all successors, transferees, or assigns, as ordered by the Commission.

Separate Statement of Commissioner Harold W. Furchtgott-Roth**In re: Notice of Proposed Rulemaking****1998 Biennial Regulatory Review -- Review of International Common
Carrier Regulations, IB Docket 98-118**

I support adoption of this Notice of Proposed Rulemaking. In my view, any reduction of unnecessary regulatory burdens is beneficial. To that extent, this item is good and I am all for it. This item should not, however, be mistaken for complete compliance with Section 11 of the Communications Act.

As I have explained previously, the FCC is not planning to "review *all* regulations issued under this Act . . . that apply to the operations or activities of any provider of telecommunications service," as required under Subsection 11(a) in 1998 (emphasis added). *See generally 1998 Biennial Regulatory Review -- Review of Computer III and ONA Safeguards and Requirements*, 13 FCC Rcd 6040 (released Jan. 30, 1998). Nor has the Commission issued general principles to guide our "public interest" analysis and decision-making process across the wide range of FCC regulations.

In one important respect, however, the FCC's current efforts are more ambitious and difficult than I believe are required by the Communications Act. Subsection 11(a) -- captioned "Biennial Review" -- requires only that the Commission "*determine* whether any such regulation is no longer necessary in the public interest." (emphasis added). It is pursuant to Subsection 11(b) -- entitled "Effect of Determination" -- that regulations determined to be no longer in the public interest must be repealed or modified. Thus, the repeal or modification of our rules, which requires notice and comment rulemaking proceedings, need not necessarily be accomplished during the year of the biennial review. Yet the Commission plans to complete roughly thirty such proceedings this year.

I encourage parties to participate in these thirty rulemaking proceedings. I also suggest that parties submit to the Commission -- either informally or as a formal filing -- specific suggestions of rules we might determine this year to be no longer necessary in the public interest as well as ideas for a thorough review of all our rules pursuant to Subsection 11(a).

* * * * *